

DOCKETED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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APR 17 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Ronald Brasher)
Licensee of Private Land Mobile Stations)
WPLQ202, KCG967, WPLD495, WPKH771,)
WPKI739, WPKI733, WPKI707, WIL990,)
WPLQ475, WPLY658, WPKY903, WPKY901,)
WPLZ533, WPKI762, and WPDU262)
Dallas/Fort Worth, Texas)
)
Et al)
_____)

EB DOCKET NO. 00-156

To: Administrative Law Judge
Arthur I. Steinberg

MOTION TO REOPEN THE RECORD
TO ACCEPT ADDITIONAL EXHIBIT INTO EVIDENCE

1. By this motion, the Enforcement Bureau requests that the Presiding Judge reopen the record and accept into evidence as Enforcement Bureau Exhibit 79 (EB Ex. 79), the material attached hereto.¹ As discussed below, this exhibit could not have been proffered during the hearing in this matter, despite the exercise of due diligence on the part of the Bureau, and is highly probative of the abuse of process issue in the case. The Bureau submits that EB Ex. 79 will greatly aid the Commission in properly determining the credibility of Ronald and Patricia Brasher (the Brashers) and the Sumpters (Jim Sumpter, Norma Sumpter, Melissa Sumpter and

¹ Proposed EB Ex. 79 is a five-page document consisting of an Affidavit of Gale Bolsover, the Bureau's handwriting expert; a supplemental report of Gail Bolsover; a transmittal letter from the Bureau to Gale Bolsover, and the documents Ms. Bolsover compared.

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Jennifer Hill), as well as the fitness of the Brashers (and that of their wholly owned corporation) to be and remain Commission licensees.

2. Background. One of the issues in this proceeding is to determine whether the Commission's processes were abused with respect to any applications that were filed to acquire any of the above-captioned licenses. With respect to stations WPJR725, WPJR739, WPJR 740 and WPJS437, the Brashers testified that in June 1996, they delivered applications (the 1996 applications in the names of the Sumpters) (EB Ex. 34, pp. 34, 41, 49, 56) and client copies of those applications (the client copies) (EB Ex. 19, Bates Nos. 198-204, 208-212, 214-220, 222-228) to Jim Sumpter's accounting office. Tr. 415-18, 818-20. They testified that they left instructions that Jim Sumpter, Norma Sumpter, Melissa Sumpter and Jennifer Hill each sign the application prepared for him or her as well as the client copy of each such application. Tr. 419-20, 820-21. They testified that they explained to Norma Sumpter that the signed applications would be forwarded to the FCC and that each of the Sumpters should retain his/her client copy. Tr. 419-20, 823. They testified that when they subsequently picked up the applications from Jim Sumpter's office, they noticed that the copies for the FCC were signed, but that the client copies were not signed. Tr. 422, 822-33. Ronald Brasher testified that neither he nor Pat questioned any of the Sumpters about the signatures on their 1996 applications prior to filing those applications with the FCC. Tr. 427. The Brashers testified that the following Saturday, June 22, 1996, Norma Sumpter and her daughters, Jennifer Hill and Melissa Sumpter, signed and dated the client copies at the Brashers' home, in their presence. Tr. 427-32, 824-25. (Jim Sumpter's client copy was not signed. (EB Exh.19, Bates# 224)) The Brashers testified that they then made

copies of the signed client copies and that those copies are of poor quality because they were made on an old copier kept at their home. Tr. 429-431, 825. Ronald Brasher (Tr. 440-41) and Norma Sumpter (Tr. 2071-73) both testified that Norma signed the 1998 assignment application that bears her signature (EB Ex. 20, p. 19 (Q-17)).

3. In contrast, the Sumpters testified that they did not sign any of the 1996 applications. Tr. 1069, 1319, 1757, 2012. Jennifer Hill, Melissa Sumpter and Norma Sumpter also specifically denied signing client copies at the Brashers' home. Tr. 1069, 1337, 2030-31. In this regard, Jim and Norma Sumpter each testified that they were both six hours away in Junction, Texas caring for a sick relative on June 22, 1996 – the day that the Brashers testified the client copies were signed. Tr. 1797-1818, 2032-48. In support of her (and her husband's) testimony, Norma produced a gas credit card receipt and other documents (EB Ex. 70).

4. On the final day of the hearing, Ms. Bolsover testified that the 1996 applications (EB Ex. 34, pp. 34, 41, 49, 56) were not signed by any of the Sumpters. Tr. 2304, 2344-46, 2372-74. Ms. Bolsover further testified that the dates and signatures appearing on the 1996 applications filed in the names of Norma Sumpter, Melissa Sumpter and Jennifer Hill (EB Ex. 34, pp.) all appeared to have been written by one person. Tr. 2304. Ms. Bolsover also testified that, the client copy of Norma Sumpter's 1996 application (EB Ex. 19, Bates No. 200 (Q-13)) also appeared to bear her signature. Tr. 2326. Ms. Bolsover testified that she was unable to determine whether Norma's signature on the client copy of her application was original to that

document,² however, because the quality of that copy is poor. Tr. 2335, 2349, 2361-63.

5. The Presiding Judge observed that the Brashers' and Sumpters' conflicting accounts concerning the signing of the 1996 applications and client copies were extraordinarily difficult to reconcile. As a consequence, he invited the witnesses to come forward, at any time prior to issuance of a decision in this case, with any new information they might remember that would aid the Commission in properly resolving the issues before it. Tr. 2246-47. Subsequent to the close of the Bureau's case, Ms. Bolsover has analyzed two pertinent documents and has prepared testimony that the Bureau believes is responsive to the Presiding Judge's invitation. As detailed in her affidavit, Ms. Bolsover concludes³ that: (1) Norma Sumpter's signature on her client copy (Q 13) (EB Ex. 19, Bates No. 200), and Ms. Sumpter's signature on her 1998 assignment application (Q 17) (EB Exh. 20, p. 19), are exact matches; and (2) that at least one of those two signatures was "cut and pasted" or otherwise copied onto the document on which it is found. Considering that the Brashers and Norma both testified that Norma signed the 1998 assignment application (Q-17), Ms. Bolsover's conclusion means that someone must have copied the signature from Norma Sumpter's 1998 assignment application onto her client copy (Q-13).⁴

² She also testified that at least two of the dates on the client copies of Norma Sumpter, Melissa Sumpter and Jennifer Hill were identical. She was unable to determine whether any of the dates (or signatures) was original to the document on which it was found and concluded that at least one (and perhaps more) of the dates was cut and pasted or otherwise copied onto the document on which it was found. Tr. 2349, 2361-63.

³ Ms. Bolsover testified that when she identifies the handwriting as being written by a person, she is "saying that that person wrote that to 100 percent certainty." Tr. 2314.

⁴ The Norma Sumpter client copy was first provided to the Commission in the Brashers' response to a Commission inquiry letter on March 4, 1999.

Such copying would be directly contrary to the Brashers' testimony regarding the origin of Norma's signature and consistent with Norma's and Jim's testimony that Norma did not sign the client copy. More significantly, it would indicate that the Brashers have lied repeatedly, not just about Norma Sumpter's 1996 application and client copy, but also about those of her husband and daughters.

6. Discussion. To reopen the record, a petitioner must show "that it relies on newly discovered evidence that could not, through the exercise of due diligence, have been discovered earlier, and ... that the new evidence, if proven, would affect the ultimate disposition of the proceeding." *Evergreen Broadcasting Co.*, 7 FCC Rcd 6601, 6602 ¶ 8 (1992). *See also William L. Carrol*, 8 FCC Rcd 6279 (1993). The Bureau believes it satisfies both requirements and that the proffered exhibit should be received.

7. The Bureau first became aware that Norma Sumpter's signature on the 1996 client copy (Q-13) might have been cut and pasted from the 1998 assignment application (Q-17) when Ms. Bolsover stated her suspicions to Bureau counsel on the last afternoon of the hearing, after disqualification of the Brashers' proposed handwriting expert and the close of the Bureau's case. Bureau counsel promptly relayed those suspicions to the Presiding Judge with Ms. Bolsover's request to do an additional examination of the documents. Tr. 2410. The record does not reflect any ruling on that request by the Presiding Judge. After the hearing, the Bureau provided Ms. Bolsover with the necessary documents to perform her analysis. That analysis confirmed her suspicions, and Ms. Bolsover thereupon prepared the supplemental report and Affidavit

submitted herewith. That supplemental report, dated April 10, 2001, constitutes newly discovered evidence in this case.

8. Generally, “[d]ue diligence’ is hardly self-explanatory . . . [it] lacks a precise definition . . . [and] is best left unfocused . . . [but] refers to a fact-specific judgment in each case as to what a reasonable plaintiff could be expected to do.” *HOHRI, et al v. United States*, 782 F.2d 227, 251 U.S. App. D.C. 145, 167-68 (D.C. Cir. 1986). Black’s Law Dictionary 411 (5th ed. 1979) defines “due diligence” as “[s]uch a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.”

9. Throughout the investigation and hearing of this matter, the Bureau has striven to provide the Presiding Judge and ultimately the Commission with the information it needs to correctly resolve the issues designated in this case. To that end, the Bureau engaged Ms. Bolsover, a well-qualified handwriting expert, and asked her to analyze the applications submitted to the Commission where there was a question of the genuineness of the signature. During discovery, the Bureau spent many hours collecting handwriting samples to aid in this endeavor. The Bureau later provided Ms. Bolsover with all available signatures from the timeframe when the questioned documents were signed, as well as the packages of recent handwriting exemplars. The documents provided to Ms. Bolsover consisted of approximately a banker’s box of signed documents. Among those documents were the client copies discussed

above. Given the breadth of the investigation undertaken in this case, the Bureau submits it has acted reasonably and exercised due diligence in discovering and introducing Ms. Bolsover's recent conclusions.

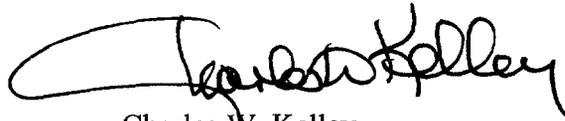
10. With regard to the second prong of the test, the Bureau submits that the attached exhibit is extremely significant. Not only will it substantially assist in the resolution of the abuse of process issue, it also will be helpful in resolving other issues. First, Ms. Bolsolver's Affidavit conclusively resolves the apparent conflict between the testimony of the Brashers and the Sumpters regarding the client copies. Second, Ms. Bolsover's Affidavit should greatly aid the Presiding Judge in determining the truthfulness and credibility of the witnesses. In this regard, the fact that Norma Sumpter did not sign her "client copy" adds strong support to the Bureau's other evidence that, in 1996, the Brashers submitted forged applications in the Sumpters' names to the Commission. Third, Ms. Bolsover's Affidavit indicates that the Brashers submitted phony client copies of applications and offered perjured testimony in an attempt to deceive the Presiding Judge and the Commission regarding the events surrounding the submission of the earlier application. All of the above should aid the Presiding Judge and the Commission in assessing the Brashers overall fitness to be licensees.

11. Because the hearing only recently closed, the parties will not be significantly prejudiced, nor will the efficiency of the adjudicatory process be undermined, by any minor delay resulting from the receipt of this additional evidence. The parties have already had an opportunity to question Ms. Bolsover about her qualifications and the standard procedures

used for document examination. Her Affidavit indicates that the comparison of documents Q-13 and Q-17 were performed in accordance with those standard procedures. Accordingly, admission of Ms. Bolsover's Affidavit and accompanying report will not prejudice the right of the other parties to due process in this matter.

12. Accordingly, the Bureau requests that the Presiding Judge reopen the record and admit into evidence the attached report and affidavit of Gail Bolsover as Enforcement Bureau Exhibit 79.

Respectfully submitted,



Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau



Judy A. Lancaster
Attorney, Investigations and Hearings Division



William H. Knowles-Kellett
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, N.W., Room 3B-443
Washington, D.C. 20554
(202) 418-1420

April 17, 2001

CERTIFICATE OF SERVICE

I, Lawrence Mweethuku, a paralegal for the Investigations and Hearings Division, Enforcement Bureau, certify that I have, on this 17th day of April, served, by the method indicated, copies of the foregoing "Motion to Reopen the Record and Admit Additional Exhibit" to:

Michael Higgs, Esq.
Schwaninger & Associates
1331 H Street, NW, Suite 500
Washington, DC 20005

Mark W. Romney, Esq.
Vial, Hamilton, Koch & Knox
1717 Main Street, Suite 4400
Dallas, Texas 75201-7388

Counsel for Ronald Brasher, Patricia Brasher, David Brasher, the Estate of O.C. Brasher, DLB Enterprises, Inc. and Metroplex Two-Way Radio, Inc., via mail and facsimile.

K. Lawson Pedigo, Esq.
Fulbright & Jaworski, L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas, 75201

Ronnie Wilson, Esq.
100 North Central Expressway, Suite 1211
Richardson, Texas, 75080

Counsel for David and Diane Brasher, via mail and facsimile.

Via hand delivery to:

Administrative Law Judge Arthur I. Steinberg
Federal Communications Commission
445 12th Street, N.W., Room
Washington, D.C. 20554

Lawrence Mweethuku
Investigations and Hearings Division
Enforcement Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) EB DOCKET NO. 00-156
)
Ronald Brasher et al.)

AFFIDAVIT

I, Gale Bolsover, under oath and penalty of perjury state the following:

1. I am a Forensic Document Analyst employed by the United States Postal Inspection Service.
2. On March 9, 2001 I testified in the above-referenced case as an expert in the field of forensic document examination and handwriting analysis.
3. Subsequent to testifying in this case I observed two signatures for Norma Sumpter, shown on a proposed Brasher exhibit, that appeared to be one and the same signature.
4. I informed FCC counsel of my discovery and was present when FCC counsel relayed that information to the Presiding Judge.
5. Thereafter, FCC counsel provided me with the documents necessary to analyze whether the two signatures were the same. Those documents were labeled Q-13 and Q-17.
6. I analyzed the documents in accordance with the standard procedure and prepared the attached report.
7. The report truthfully and accurately reflects the results of my analysis of the questioned documents.

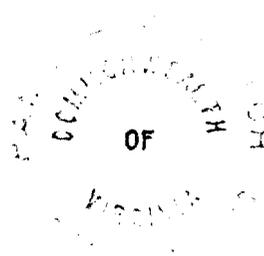
4/10/01
Date

Gale Bolsover
Gale Bolsover

Subscribed and sworn to before me by the above-named affiant on this 10th day of April 2001.

Pamela C. Gatch
Notary Public

My commission expires: Jan. 31, 2003





FORENSIC LABORATORY EXAMINATION REPORT

UNITED STATES POSTAL INSPECTION SERVICE
NATIONAL FORENSIC LABORATORY
22433 RANDOLPH DRIVE
DULLES VA 20104-1000

April 10, 2001

Case No. 571-128982-FC (2); QD-10935 (5)
Handwriting Examination
Requested March 16, 2001

Judy Lancaster, ESQ.
Federal Communications Commission
Investigations and Hearings Division
445 12th Street, SW, Room 3-B-443
Washington, DC 20554

PROBLEM: Determine whether the "Norma Sumpter" signatures appearing on Exhibits Q-13 and Q-17 are from a common origin.

FINDINGS: The examination and comparison of the questioned "Norma Sumpter" signatures appearing on Exhibits Q-13 and Q-17 resulted in the definite conclusion that the signatures are machine copies of a single handwritten entry. At least one of these signatures is not original to the document on which it appears, but has been cut and pasted or otherwise copied onto the exhibit on which it is found.

EXHIBITS: The exhibits, as described in the request are returned with this report of examination.


Gale Bolsover
Forensic Document Analyst



**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU**

**445 12th STREET S.W • WASHINGTON, D.C. 20554
TEL: (202) 418-1700 • FAX: (202) 418-2822**

In Reply Refer to:
EB Docket #00156

March 16, 2001

Ms. Gale Bolsover
Questioned Document Section
Forensic & Technical Services Division
U.S. Postal Inspection Service
National Forensic Laboratory
22433 Randolph Drive
Dulles, Virginia 20104-1000

Re: Your Case No. QD-10935

Dear Ms. Bolsover:

Enclosed, please find an additional document for you to examine. We are returning the other documents you previously reviewed to aid in this endeavor.

Q-17 Norma Sumpter signature on FCC 1046 dated 1/28/98.

Thank you for your cooperation in this matter.

Sincerely,
Lawrence Mwethuku
For Judy Lancaster
(202) 418-0697

EB Ex. 79, p. 3

ENVIRONMENTAL REPORT

28. Would a Commission grant of any proposal in this application have a significant environmental effect as defined by 47 CFR 1.1307?
If "Yes" attach environmental assessment as required by 47 CFR 1.1307.

ALIEN OWNERSHIP

- 29. Is the applicant a foreign government or the representative thereof?
30. Is the applicant an alien or the representative of an alien?
31. Is the applicant a corporation organized under the laws of a foreign country?
32. Is the applicant a corporation of which any officer or director, or of which the capital stock is owned of record or voted by aliens or their representatives, or by any representative thereof or by any corporation organized under the laws of a foreign country?
33. Is the applicant a corporation directly or indirectly controlled by any alien, or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or by any representative thereof, or by any corporation organized under the laws of a foreign country?
If "yes", attach exhibit explaining nature and extent of alien or foreign ownership.

BASIC QUALIFICATIONS

- 34. Has the applicant or any party to this application or amendment had any FCC license, authorization, permit, or construction permit revoked or had any application for an initial, renewal, modification, or correction of FCC license, authorization, license, construction permit denied by the Commission?
35. Has the applicant, or any party to this application or amendment, or any party controlling the applicant ever been convicted of a felony by any state or federal court?
36. Has any court finally adjudged the applicant, or any party to this application or amendment, guilty of unlawfully monopolizing or attempting unlawfully to monopolize, or of acting indirectly, through control of manufacture or sale of radio apparatus, or by any other means or unfair methods of competition?
37. Is the applicant, or any person directly or indirectly controlling the applicant, the subject of a pending matter referred to in the preceding two items?
38. Does the undersigned certify (by responding "Yes") to this question that the applicant or any party to the application is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 USC 882, for possession or distribution of a controlled substance?
See 47 CFR 1.2002(b) for the meaning of "party to the application".

CERTIFICATION

The APPLICANT waives any claim to the use of any particular frequency or frequencies in the United States because of the previous use of the same by another party in accordance with this application. The applicant certifies that the use of the frequencies of the spectrum aggregation limits in 47 CFR Part 20. All applicable rules and regulations are incorporated herein as if set out in full in this application. The undersigned certifies that all statements made in this application and in all attached exhibits are true, correct, and complete, and are made in good faith.

39. Applicant is a (an) [I] Individual [] Unincorporated Association [] Corporation [] Governmental Entity

40. Typed Name of Person Signing: NORMA SUMPTER

42. Signature: Norma Sumpter

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY AND ALL FEDERAL LICENSES (U.S. Code, Title 47, Section 312(b)(1)), AND/OR FORFEITURE OF ANY AND ALL FEDERAL ASSETS.

0-13 EB 6x79 P4 000200

ASSIGNMENT OF AUTHORIZATION

To be used in the Private Radio Services Indicated below, where the present licensee's activities are intended to be continued under new ownership.

1. The present licensee completes the information requested below.
2. This form is then attached to the proper application form (see below) which has been completed by the party requesting the station license, the assignee.
3. If more than one authorization is involved, use a separate Assignment of Authorization and a separate application form for each requested authorization.

INVOLUNTARY ASSIGNMENT

In the event of the assignor's death or legal disability, it is requested that, in lieu of the declaration appearing below, you submit a copy of the court order or other documentary proof that you are the person legally qualified to succeed to the assignor's business assets, or a statement explaining the circumstances under which control must be involuntarily transferred to the assignee, accompanied by the appropriate application form (see below) for assignment of each such authorization.

Radio Service Application Forms

Commission Rules

FCC Form 600 - Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization	90.119
FCC Form 402 - Application for Station Authorization in the Private Operational Fixed Microwave Radio Service	94.27
FCC Form 406 - Application for Ground Station Authorization in the Aviation Services	87.21
FCC Form 503 - Application for Land Radio Station License in the Maritime Services	80.19

CURRENT AUTHORIZATION	
Radio Service IG(Conventional - Industrial/Business)	Licensee Name and Station Location Norma Sumpter 33-09-23N/096-42-48 457m SE of INT CR 154
Call Sign WPJR739	
CERTIFICATION	
I hereby propose the assignment of all my right, title and interest in the authorization described above. Such assignment to <u>DLB Enterprises, Inc. d/b/a Metroplex Two-Way Radio Service</u> shall not be completed nor become effective until authorization has been issued by the Commission in the name of the assignee. My authorization will be submitted to the Commission for cancellation upon completion of assignment.	
Name of Assignor (include title, if applicable) Norma Sumpter	Assignor's Signature and Date <i>Norma Sumpter 1-28-98</i>

NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT OF 1974 AND THE PAPERWORK REDUCTION ACT OF 1980

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form, as well as the form itself, will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to Commission Rules. The foregoing notice is required by the Privacy Act of 1974, Public Law 93-579, December 31, 1974, 5 U.S.C. Section 552a(e)(3).

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Federal Communications Commission, Records Management Branch, AMD-IM, Washington, DC 20554, Paperwork Reduction Project (3060-0127).